Last paragraph of pg. 5 redacted by ruling dated 11/4/2011

Supreme Court No. 84894-7

Court of Appeals No. 62843-7-I

SUPREME COURT
OF THE STATE OF WASHINGTON

SCOTT E. STAFNE,

Petitioner

vs.

SHPHOMISH COUNTY AND
SNOHOMISH COUNTY PLANNING DEPARTMENT

Respondents

STAFNE'S CITATION OF SUPPLEMENTAL AUTHORITY

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ISSUE: Whether decision to a deny docketing proposal is a legislative or quasi-judicial decision?

Phoenix Dev., Inc. v. City of Woodinville, 71 Wn.2d 820, 256 P.3d 1150, 1158 (2011)

"Phoenix argues that the City engaged in an unlawful procedure by invoking its legislative authority during a quasijudicial proceeding, allegedly 'adopt[ing] a new policy rather than applying existing policies and regulations.' Answer to Pet. for Review at 5. Because the City is bound to follow its own ordinances governing rezone applications, we agree with Phoenix that a city's decision to rezone is a quasijudicial act. *See Woods*, 162 Wn.2d at 616. However, we also hold that the City's action was not legislative, although it was mischaracterized as such.

An action is legislative if it declares or prescribes a new law, policy, or plan. *Ruano v. Spellman*, 81 Wn.2d 820, 823-24, 505 P.2d 447 (1973). FF 6 does not declare or prescribe a new law, policy or plan or even modify existing standards. Rather, it makes statements that are directly tied to existing policies, and to the general rules governing rezone applications. *Compare* CP at 21, 28 (FF 6), *with* WMC 21.04.080 *and* WMC 21.44.070, *and Citizens for Mount Vernon*, 133 Wn.2d at 874-75. If anything, FF 6 is a restatement of the evidence in the record supporting its ultimate conclusions, not an unlawful procedure."

ISSUE: Does LUPA apply to County's previous land use decisions made within Twin Falls rural settlement?

Brotherton v. Jefferson County, 160 Wn.App. 699, 703-705, 249 P.3d 666 (2011)

County raises LUPA 21 day jurisdictional limitation related to health department's determination of a land use on appeal to prevent Court of Appeal's consideration of a constitutional challenge to an ordinance.

ISSUE: Does the Growth Management Board have jurisdiction to review *denial* of docketing proposal to amend Growth Management Plan and/or development regulations?

Feil v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 367, 377 – 382, 259 P.3d 227 (2011)

"Pursuant to RCW 36.70A.280(1)(a), a hearings board's authority under the GMA is limited to hearing and determining ***only those petitions alleging that a county is not in compliance with the requirements for development regulations or amendments adopted under RCW 36.70A.040.*** Significantly, the GMA expressly excludes from the definition of "development regulations" a "decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city." RCW 36.70A.030(7).

Davidson Serles & Associates v. City of Kirkland, 159 Wn. App. 616, 246 P.3d 822, 834-835 (2011)

"The issue of spot zoning could not have been raised before the Board ***because the Board has jurisdiction to review only those claims that the comprehensive plan and development regulations do not comply with particular statutory provisions.*** *See* RCW 36.70A.280. Thus, the Board cannot review challenges to the comprehensive plan and development regulations based on constitutional challenges. *See Point Roberts Registered Voters Assoc. v. Whatcom Cnty.*, No. 00-2-0052, at 4 (West. Wash. Growth Mgmt. Hr'gs Bd. Final Decision & Order Apr. 6, 2001). Furthermore, because the issue could not have been raised before the Board, the issue could not be raised on an appeal from the Board decision. 'An issue not raised before an agency may not be properly raised on appeal.' *Manke Lumber Co., Inc. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 113 Wn. App. 615, 630, 53 P.3d 1011 (2002) (citing RCW 34.05.554(1)). The City's assertions here, which are to the contrary, border on the frivolous.

Davidson also cites *Stafne v Snohomish County* at 246 P.3d at 828 for proposition that where adoption of Comprehensive Plan is adopted an appeal to the Growth Management Board constitutes a remedy at law.

Spokane County v. Eastern Washington Growth Management Hearings Bd., 160 Wn.App. 274, 250 P.3d 1050 (2011)

Challenge to County's amendment of Comprehensive Plan, which included site specific rezones, is legislative decision which is properly challenged by way of an appeal to the Growth Management Board.

Brinnon Group v. Jefferson County, 245 P.3d 789, 249 P.3d 666 (2011)

(Board has jurisdiction to review challenge to the adoption of Comprehensive Plan)

ISSUE: What is the standard for inherent judicial review?

Porter v. Seattle School Dist. No. 1, 248 P.3d 1111, 1112 (Wash.App. Div. 1 2011)

Notwithstanding a statute directing that an appeal to the superior court is to be heard de novo, RCW 28A.645.030, there is no dispute that in the present case, judicial review is limited to whether the Board acted arbitrarily, capriciously, or contrary to law. *See Haynes v. Seattle Sch. Dist. No. 1*, 111 Wash.2d 250, 253-54, 758 P.2d 7 (1988), *cert. denied*, 489 U.S. 1015 (1989). This limitation upon review of a nonjudicial decision by an administrative agency is a function of the doctrine of separation of powers. *Household Fin. Corp. v. State*, 40 Wash.2d 451, 244 P.2d 260 (1952).

Federal Way School District No. 210 v. Vinson, 261 P.3rd 145, 2011 Wash. LEXIS 786 (2011)

The Washington State Constitution recognizes the right to seek discretionary review of an administrative agency [quasi-judicial] decision

under the court's inherent constitutional power (also known as constitutional or common law certiorari). Const. Art IV, —§§4, 6. "The scope of review is limited to whether the hearing officer's actions were arbitrary, capricious, or illegal, thus violating a claimant's fundamental right to be free from such action." [cites] (constitutional certiorari is limited to a review of the record to determine whether the challenged decision or act was arbitrary and capricious or contrary to law). "The fundamental purpose of the constitutional writ of certiorari is to enable a court of review to determine whether the proceedings below were within the lower tribunal's jurisdiction and authority."

ISSUE: Was the issuance of a statutory writ of mandamus or prohibition available to require Snohomish County and the Snohomish County Planning Department to follow the GMA's definition of Forest Land and/or Snohomish County's own criteria for Forest Land?

City of Seattle v. Holifield, 170 Wn.2d 230, 242 note 12, 240 P.3d 1162 (2010)

"The writ of prohibition 'arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.' RCW 7.16.290.

and at 170 Wn.2d 243

"Neither a writ of mandate nor a writ of prohibition is authorized to correct errors of law. The writ of review, on the other hand, is for just that purpose." *Id. Keene* specifically rejected *Epler*'s assertions to the contrary. *Id.* at 632. *Keene* cited with approval our case of *Williams,* 101 Wn.2d 445, in which we upheld, after reviewing substantive errors of law, a writ for interlocutory review of an order denying a jury trial. While the *Williams* court indicated interlocutory writs should issue sparingly, it nonetheless implicitly authorized their use to correct errors of law when appropriate. *Id.* at 455.

Request for judicial notice (last paragraph) redacted by ruling dated 11/4/2011

Holiday v. City of Moses Lake, 157 Wash.App. 347. 353 -354, 236 P.3d 981 (2010)

"The City next argues claim preclusion does not apply to its April 2009 code enforcement action, because after the March 9, 2006 infraction, in 2008, the City repealed chapter 8.50 MLMC and adopted a new chapter, chapter 8.52 MLMC. The City argues the new chapter created a new law, which applies to the Holidays even though the applicable MLMC language is unchanged. We disagree. The writ of prohibition prohibited the City from taking action against the Holidays for their lot use. Therefore, regardless of the legal effect of the repeal of chapter 8.50 MLMC and the adoption of chapter 8.52 MLMC, the City could not proceed with its April 2009 code enforcement action without violating the writ of prohibition."

Cf. Goldmark v McKenna, 259 P.3d 1095; 1099 - 1100, 2011 Wash. LEXIS 668 (2011)

"[Original] Mandamus is an extraordinary remedy that the supreme court grants only if the mandatory act sought to be compelled is not discretionary."

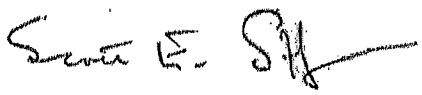
Cf. City of Seattle v McKenna, 259 P.3d 1087, 2011 Lexis 666 (2011)

Original Mandamus is not appropriate to require performance of a discretionary act.

Cf. Seattle Times Co. v. Serko, 170 Wn.2d 581, 498 - 590, 243 P.3d 919 (Wash. 2010)

Mandamus an appropriate remedy where, among other things, third party had no right to bring declaratory judgment action.

Respectfully Submitted,



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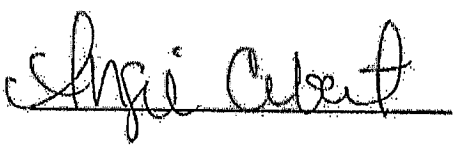
CERTIFICATION OF SERVICE

I, Angie Cibert, declare under the penalty of perjury that I served a copy of the Petitioner's Stafne''s Citation of Supplemental Authority, on Respondent's attorney by depositing a copy of this document with the U.S. Postal Service addressed to John Moffat and Bree Urban at 3000 Rockfeller Ave M/S 504, Everett, WA 98201-4046

Dated: October 31, 2011, at Arlington, Washington



Angie Cibert